

STATE OF INDIANA ) IN THE HAMILTON SUPERIOR COURT  
 ) SS:  
COUNTY OF HAMILTON ) CAUSE NO.: **29D03 0710 CC 1206**

STATE OF INDIANA,  
  
Plaintiff,  
  
v.  
  
ROD HARDESTY and  
NATHAN MERTZ, individually  
and doing business as  
ADVANCED EXTERIORS,  
  
Defendants.

FILED  
2001 OCT 23 AM 11:29  
Clerk, Hamilton County Courts  
J. J. Porteus

**COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS, AND CIVIL  
PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General January Portteus, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code § 24-5-11-1, *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

**PARTIES**

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code § 24-5-11-14.

2. At all times relevant to this Complaint, the Defendant, Rod Hardesty, individually and doing business as Advanced Exteriors, was an individual engaged in business as a home improvement contractor with a principal place of business in Hamilton County at 12544 Pointer Place, Fishers, Indiana 46038.

3. At all times relevant to this Complaint, the Defendant, Nathan Mertz, individually and doing business as Advanced Exteriors, was an individual engaged in business as a home improvement contractor with a principal place of business in Hamilton County at 12544 Pointer Place, Fishers, Indiana 46038.

### **FACTS**

4. Since at least August 15, 2006 the Defendants have entered into home improvement contracts with Indiana consumers.

5. On or about August 15, 2006 the Defendants entered into a contract with Rev. James R. Snyder ("Snyder") of Fishers, Indiana, wherein the Defendants represented they would repair Snyder's roof and Snyder paid Six Thousand Fifty Dollars and Fifty Cents (\$6,050.50) as a down payment. Attached and incorporated by reference as Exhibit "A" is a true and accurate copy of the contract Snyder received.

6. The Defendants failed to include the following information in the contract with Snyder:

- a. the approximate starting and completion dates of the proposed home improvements;
- b. a statement of contingencies that would materially change the approximate completion date;
- c. the home improvement contract price; and
- d. a legible printed or typed version of each party's name directly after or below the signature on the contract.

7. Due to these deficiencies the Defendants failed to give the consumer a fully executed copy of the contract.

8. The Defendants failed to obtain the necessary permit, as required by the Town of Fishers Code of Ordinances § 155.10, prior to commencing any work under their agreement with Snyder.

9. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of contract formation that they would complete the job, pursuant to the terms of the contract, within a reasonable period of time.

10. The Defendants have neither completed the work, nor issued a refund to Snyder.

### **COUNT I – VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS**

#### **ACT**

11. The service described in paragraph 5 is a “home improvement” as defined by Ind. Code § 24-5-11-3.

12. The transaction referred to in paragraph 5 is a “home improvement contract” as defined by Ind. Code § 24-5-11-4.

13. The Defendants are “suppliers” as defined by Ind. Code 24-5-11-6.

14. In failing to provide the consumer with a completed home improvement contract containing the information referred to in paragraph 6, the Defendants violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-10.

### **COUNT II – VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT**

15. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 14 above.

16. The Defendants' violations of the Indiana Home Improvement Contracts Act, referred to in paragraph 6 and 7, constitute deceptive acts by the Defendants, in accordance with Ind. Code § 24-5-11-14.

17. By failing to obtain a proper permit prior to engaging in a consumer transaction, as referenced in paragraph 8, the Defendants violated the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-10(a)(1).

18. The Defendants' representations to Snyder that the Defendants would be able to deliver or complete the subject of the consumer transaction within a reasonable period of time, when the Defendants knew or reasonably should have known they could not, as referenced in paragraph 9, constitute violations of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

**COUNT III – KNOWING AND INTENTIONAL VIOLATIONS OF THE  
DECEPTIVE CONSUMER SALES ACT**

19. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 18 above.

20. The deceptive acts set forth in paragraphs 5, 6, 7, 8, 9, and 10 were committed by the Defendants with the knowledge and intent to deceive.

**RELIEF**

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendants, Rod Hardesty and Nathan Mertz, individually and doing business as Advanced Exteriors, enjoining the Defendants from the following:

- a. in the course of entering into home improvement transactions, failing to provide the consumer a written, completed home improvement contract, which includes at a minimum the following:

- i) The name of the consumer and the address of the residential property that is the subject of the home improvement;
- ii) The name and address of the Defendant and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- iii) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- iv) A reasonably detailed description of the proposed home improvements;
- v) If the description required by Ind. Code § 24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- vi) The approximate starting and completion date of the home improvements;
- vii) A statement of any contingencies that would materially change the approximate completion date;
- viii) The home improvement contract price; and
- ix) Signature lines for the Defendant or the Defendant's agent and for each consumer who is to be a party to the home improvement

contract with a legible printed or typed version of that person's name placed directly after or below the signature;

- b. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer;
- c. soliciting or engaging in home improvement transactions without a license or permit as required by law;
- d. representing, expressly or by implication, that Defendants are able to start or complete a home improvement within a stated period of time, or when no time period is stated, within a reasonable time, when Defendants know or should reasonably know they cannot.

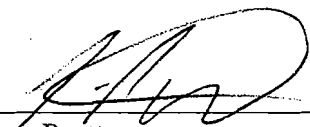
AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter a judgment against Defendant for the following relief:

- a. cancellation of the Defendants' unlawful contracts with all consumers, including but not limited to Rev. James R. Snyder, pursuant to Ind. Code § 24-5-0.5-4(d);
- b. consumer restitution, pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers to the Defendants, including but not limited to Rev. James R. Snyder, in an amount to be determined at trial;
- c. costs, pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

- d. on Count III of the Plaintiff's Complaint, civil penalties, pursuant to Ind. Code § 24-5-0.5-4(g), for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;
- e. on Count III of the Plaintiff's Complaint, civil penalties, pursuant to Ind. Code § 24-5-0.5-8, for the Defendants' intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- f. all other just and proper relief.

Respectfully Submitted,

STEVE CARTER  
Indiana Attorney General  
Atty. No. 4150-64

By:   
January Portteus  
Deputy Attorney General  
Atty. No. 25741-49

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Indianapolis, IN 46204  
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# Advanced Exteriors

12544 Pointer Pl  
Fishers, IN 46038  
(317)701-5977

Homeowner: Pro James R. Snyder Home# \_\_\_\_\_ Cell# \_\_\_\_\_ Date: 08-15-06

Street: \_\_\_\_\_ City: Fishers St: IN Zip: 46038

Furnish and Install a 25 yr Comp /or Like \_\_\_\_\_  
Style year manufacturer

- ☒ STRIP OFF AND HAUL AWAY 1 LAYERS OF Comp
- ☒ PREPARE THE EXISTING DECK FOR ROOF INSTALLATION
- ☒ RE-DECK WITH 1/2 INCH PLYWOOD
- ☒ APPLY A ☒ 15# FELT BASE ☐ 30 # FELT BASE
- ☒ REPLACE EXISTING VENTS
- ☒ REPLACE ALL PLUMBING VENTS
- ☐ CLOSED VALLEYS WITH 90# ROLLED ROOFING
- ☒ REFLASH CHIMNEY AS NEEDED
- ☒ REMOVE ALL OUTSIDE DEBRIS PROMPTLY: ROLL YARD, DRIVEWAY WITH MAGNETIC NAIL SWEEPER
- ☒ 2 YEAR LABOR WARRANTY

## ADDITIONAL WORK DESCRIPTION

#250 Coupon

Deposit of \$6050.50  
CK # 5128

Rad Jurek

#250 Donation to Faith Presbyterian upon completion

**THE ONLY COST TO THE HOMEOWNER IS THEIR DEDUCTIBLE. THE BALANCE IS PAID BY THE INSURANCE COMPANY PER FINAL LOSS INVOICE.**

CLAIM # \_\_\_\_\_ INS.CO \_\_\_\_\_ ADJUSTER \_\_\_\_\_

ADVANCED EXTERIORS will invest its time and expertise in assisting the homeowner with the insurance claim. This proposal is Contingent upon the insurance company paying for the roof and will be void if the claim is disallowed by the insurance company. Homeowner agrees for ADVANCED EXTERIORS to negotiate with the insurance company on their behalf toward a fair and equitable settlement of this claim. The homeowner's liability will not exceed the deductible plus any possible upgrades. Homeowner agrees ADVANCED EXTERIORS is entitled to any and all supplements approved by the insurance company.

James R. Snyder  
HOMEOWNER

Rad Jurek  
ADVANCED EXTERIORS

Total insurance price\$ \_\_\_\_\_ Deposit \$ \_\_\_\_\_ Balance \$ \_\_\_\_\_  
Plus any unforeseen amounts stated above, supplements and O & P. All checks must be made payable to ADVANCED EXTERIORS. Any checks made out to anyone other than ADVANCED EXTERIORS will not be considered payments toward the balance.

Homeowner Signature \_\_\_\_\_ Date \_\_\_\_\_

Accepted by \_\_\_\_\_ Date \_\_\_\_\_

